

# **Committee on Resources**

## **Subcommittee on Energy & Minerals Resources**

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### **Witness Testimony**

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**Testimony of Lexi Shultz, Staff Attorney**

**U.S. Public Interest Research Group**

**August 3, 1999**

**House Resources Committee**

**Subcommittee on Energy and Mineral Resources**

**Good Afternoon. My name is Lexi Shultz, and I'm a Staff Attorney with the U.S. Public Interest Research Group, or U.S. PIRG. U.S. PIRG is the national office for the State PIRGs, which are environmental and consumer advocacy groups active around the country. Thank you for the opportunity to speak today.**

**My role at U.S. PIRG is to end what we call "Polluter Pork" - federal programs and policies which subsidize environmentally destructive activities. The 1872 Mining Law is a prime example of a polluter pork policy, because it has been cheating taxpayers and the environment for the last 127 years. Because of the law's antiquated provisions, \$240 billion worth of minerals have been given away for free, public lands containing billions more in minerals have been sold for the ridiculous sum of \$2.50 to \$5.00 an acre, and taxpayers have been left with a legacy of more than half a million abandoned and polluting mines around the country, which will cost an estimated taxpayers \$32 to \$72 billion to clean up.**

#### **The Antiquated 1872 Mining Law Subsidizes Environmental Destruction and Public Health Risks:**

**There are several ways in which the outdated 1872 Mining Law has, by subsidizing the mining industry, actually encouraged environmental destruction. First of all, by selling off public lands at below market prices and letting the industry have free access to \$240 billion worth of public minerals, the law has blocked taxpayers from getting a fair return on their resources and encouraged the mining industry to overuse public lands.**

**Second, by failing to provide land managers with the discretion to deny mines once valid mining claims have been established, the law has elevated the interests of the mining industry over all other possible uses and interests in the land, including those of taxpayers, other businesses benefiting from the land, public health and the environment. That is, under the 1872 Mining Law, federal land managers must approve mining operations with valid claims, even if tourism would be a more economical use of the land, even if drinking water and public health would be compromised by the presence of a mine in the area, and even if the land is of particularly crucial significance for the health of an ecosystem.**

Third, by omitting any standards to address the specific environmental problems caused by mining, the law has failed to prevent mining-related pollution, leaving a legacy of 12,000 miles of polluted streams and rivers, air pollution, contaminated drinking water, and disrupted habitat. While the mining industry must comply with the same environmental laws that every other business in America must comply with - the Clean Water Act, the Endangered Species Act and others - these laws do not protect against contamination of groundwater from heavy metals and chemicals like cyanide. Nor do these laws directly address acid mine drainage caused by rain and snow falling on mining wastes, or the metal-laden dust and particulate matter created by mining operations. Considering that modern mining produces more waste than all other sources combined, including municipal waste, and that mining contamination can last for hundreds or thousands of years, it is inexcusable that everything possible is not being done to prevent this pollution from occurring in the first place.

Fourth, the law lacks any standards either for the reclamation of mined-out lands or for the mining industry to bear the financial responsibility from that cleanup. As a result, the law has encouraged mining companies to simply walk away from mines once they are done, leaving taxpayers with devastated public lands and an enormous cleanup bill. The Mineral Policy Center has estimated that taxpayers will eventually have to pay \$32 to \$72 billion to clean up the more than half a million abandoned and polluting mine sites across the country. Seventy of these sites have been designated as Superfund sites because of the enormous damage to human health and the environment that they are causing. Each of these sites alone may cost in excess of \$100 million to clean up. Moreover, because the mining industry knows that it will not be liable for the full costs of cleaning up abandoned mines, it has no incentive to minimize the amount of pollution it will produce in advance.

#### **The Consequences of Mining on the Environment and Human Health have been Devastating:**

The consequences of the 1872 Mining Law's outdated and misguided policies have been devastating, both to the environment and to human health around the country. Consider the following examples taken from a report produced by the Mineral Policy Center entitled "Burden of Gilt."

In Montana, windblown particulates from old mine tailings piles in and around Butte deposited heavy metals on high-school baseball fields in such dangerous concentrations that the fields had to be excavated and the topsoil had to be replaced. The city's water treatment plant is built on old tailings deposits that contain dangerously high concentrations of copper, zinc, cadmium, arsenic, and lead. Sediments from mine tailings have contaminated more than 35 square miles of groundwater in the Butte area.

In Idaho, lead levels in Silver Valley soil downwind from the abandoned Bunker Hill silver mine - designated as a Superfund site - were found to be more than 30 times higher than maximum levels deemed "safe" by the Environmental Protection Agency. Virtually all of the 179 children living within a mile of the site were found to have potentially brain-impairing levels of lead in their blood.

In New Mexico, after a molybdenum mine near Questa was inactivated when prices fell in the mid-1980's, tailings from the mine continued to contaminate the Red River, killing fish and destroying wildlife habitat, and also contaminated wells relied on by Taos County residents.

In Colorado, the Summitville cyanide-leach gold mine sent a flood of cyanide and heavy metals into the Alamosa River, killing fish and destroying 17 miles of the river, when its 45-acre waste pile

flooded and leaked. The Galactic Resources Mining Company paid only minimal fines and a \$4.7 million performance bond before filing for bankruptcy. The state and the EPA have already spent \$130 million to clean up this Superfund site, and estimate that the job will take another \$45 million of taxpayer money to complete.

In Montana, the Pegasus Gold Corporation went bankrupt, leaving taxpayers to pick up the approximately \$100 million bill to clean up the now defunct Zortman-Landusky mine.

### **The Antiquated 1872 Mining Law Must be Comprehensively Reformed:**

It is clear that, under the current provisions of the 1872 Mining Law, far too much environmental destruction and far too many public health risks have occurred. In order to prevent these horror stories from being repeated, and in order to protect public lands and the Americans who own those lands, the entire 1872 Mining Law must be reformed. This reform must be undertaken comprehensively and with the goal of protecting the interests of taxpayers and the environment, not just those of the mining industry. Accordingly, the law must be reformed with three basic principles in mind:

**Fair Return to the Taxpayers.** The mining industry should be required to pay fair market value for both public minerals and public lands. For minerals, the mining industry should pay a 12.5 percent royalty, which is the same as the royalty paid by the oil industry for drilling on public lands and by the coal industry for mining above ground on public lands. Since mining companies pay royalties for mining on both state and private lands, there is no reason why they cannot give federal taxpayers the same consideration. For public land, the practice of "patenting," selling land for \$2.50 to \$5.00 an acre, should be permanently abolished. Mining companies should be forced to engage in arms-length transactions with the federal taxpayers, just as they would if they were dealing with private entities. The taxpayer-subsidized "free lunch" must end.

**Pollution Prevention.** The best way to protect clean water, clean air, and wildlife habitat is to prevent pollution in the first place. Reform of the law must include environmental standards that will address the specific environmental problems caused by hardrock mining, including groundwater contamination, runoff, and other such problems. These standards must also deal with the reclamation of mined-out lands so that these sites do not become a hazard in the future. Moreover, where no amount of environmental safeguards could adequately protect a particular region, whether because of its importance for drinking water, for wildlife habitat, for recreational opportunities, or any other reason, land managers must be given the discretion to deny mines in order to protect those interests. Finally, in order to minimize the potential for destruction, the mining industry should not have access to unlimited amounts of public land for the dumping of mining wastes.

**Polluter Pays.** The mining industry must be required to pay for the clean-up of both depleted mines and any mines for which pollution prevention failed. These costs should be borne by the industry that caused the pollution or degradation of the land. In this way, taxpayers will not have to shoulder what should be a normal cost of doing business for an industry taking advantage of public resources, and the mining industry will have an incentive to mine as responsibly and with the least disruption as possible.

### **The Mill Site- Mine Site Issue is the Law and Must be Enforced:**

**There is one provision in the 1872 Mining Law that has the potential to protect taxpayers and the environment, by limiting the amount of public land available for the dumping of toxic mining wastes. This provision provides that mining companies may have a mill site of 5 acres, to be used to process or dump overburden and ore, for each 20-acre mineral claim. Despite industry claims to the contrary, this provision has been a part of the law since 1872. And despite industry claims to the contrary, the law does not allow unlimited numbers of mill sites for each mineral claim. If it did, there would be no need for the law to have limited the size of mill sites to 5 acres - it could simply have provided that mining companies be allowed to have a mill site of unlimited size.**

**The fact that this portion of the law has been inconsistently enforced until recently is highly unfortunate and may have led to otherwise avoidable environmental degradation. However, this fact does not alter the provision's legal authority.**

**Nor does this provision mean the end of mining, as the industry claims. Mining companies can do land exchanges, apply for special use permits, or, in some instances, reconfigure their mines to mine underground. While these alternatives may not be as favorable to the mining industry as having access to unlimited amounts of public land at little or no cost, they are the only options that can even begin to give taxpayers and the environment a fair shake.**

**Because the law is finally being enforced the way it was written, the industry may try to push weak or "sham" reform. PIRG opposes any attempts at reform of the 1872 Mining Law that do not adequately address the needs of taxpayers, the environment, and public health.**

**Conclusion:**

**It is time to put an end to the taxpayer-subsidized environmental destruction and public health risks caused by the outdated 1872 Mining Law. What is needed is meaningful comprehensive reform of the law that will fully protect the interests of taxpayers and the environment.**

**Thank you.**

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